

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

In re BAYCOL PRODUCTS LITIGATION

MDL No. 1431
(MJD/JGL)

This Document Relates to:

One Hundred Forty-Two (142) Branch Law Firm
Cases listed as “Other Unacceptable PFS
[Plaintiff Fact Sheet] submissions pursuant to
PTO 81 Order w/ 12/08/04 deadline”

**DEFENDANTS’ SUR-REPLY IN OPPOSITION TO PLAINTIFFS’
MOTION IN ANTICIPATION OF POSSIBLE DISMISSAL
UNDER PTO 81 AND RECONSIDERATION**

Plaintiffs’ reply brief makes certain purportedly factual assertions for the first time. For that reason, defendants seek leave of the Court to address those new assertions in this sur-reply.

First, plaintiffs suggest the Court should set aside its dismissal orders because a *few* of the plaintiffs fall within PTO 127 Categories A or B. Pl. Reply at 3. However, these claims were *not* categorized by either defendants or the PSC because plaintiffs had failed to provide PTO 81 discovery and dismissals were pending. Therefore, the Branch firm is relying solely on its internal assessment of these cases.

Second, plaintiffs state that the putative Category A claim of James Pylate has been submitted for possible settlement. Plaintiffs omit that Bayer declined to discuss settlement of the claim *in December*. See Letter from D. Schreiner to T. Branch and S. Patterson (Dec. 2, 2004) (attached).

Third, plaintiffs claim that defendants have changed their procedure for communicating with plaintiffs about overdue PTO 81 discovery. Pl. Reply at 2. This assertion is unsupported and inaccurate. The manner in which notice was provided in these cases is described in Defendants' Opposition and has remained consistent throughout this litigation.

For the reasons stated above and in Defendants' Opposition, plaintiffs' motion should be denied.

March 16, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, David L. Barlett, certify that a true and correct copy of the foregoing Defendants' Sur-Reply in Opposition to Plaintiffs' Motion in Anticipation of Possible Dismissal Under PTO 81 and Reconsideration was filed and served via Verilaw on March 16, 2005.


